PERBADANAN PEMBANGUNAN BANDAR

v.

MARIAMAH A/P SUNDRAMURTHY

HIGH COURT, JOHOR BAHRU
TUAN HAIDAR BIN MOHD NOOR J.
[CIVIL APPEAL NO. 11-20-93]
29 JUNE 1994

PRACTICE & PROCEDURE: Order 49 r. 6 SCR - O. 26A Appeal to Judge in chambers - Delay in filing record of appeal - Notice of motion filed for extension of time to file record of appeal - Determination of preliminary issue by Court - Effect of new r. 6 in O. 49 SCR - Whether amendment relates to procedure or rights affecting a party - Whether amendment retrospective - Whether defendant caught by amendment.

The defendant filed a notice of appeal against the decision of the learned Magistrate who granted summary judgment in favour of the plaintiff pursuant to O. 26A of the Subordinate Courts Rules 1980 (SCR). As there was a delay in filing the record of appeal in the High Court, the defendant filed a notice of motion for extension of time which was opposed by the plaintiff. At the hearing of the notice of motion it was agreed that the Court should determine a preliminary issue, that was, whether the defendant was caught by the amendment to O. 49 of the SCR in which a new r. 6 had been inserted.

In determining the preliminary issue the Court had to consider whether the amendment related to procedure or rights affecting a party.

Held:

[1] The new r. 6 was intended to cover appeals to a Judge in chambers in respect of any decision of the Subordinate Courts other than a decision made after trial. This was akin to an appeal from the decision of the Registrar of the High Court to a Judge in chambers. The purpose was to expedite the disposal of such cases.

[2] The present amendment, in the Court's view, took the form of procedure only as the substantive right of appeal of the applicant remained intact. The amendment merely devised the form of procedure in the preparation of the record of appeal pertaining to any decision other than a decision made after trial which was prescribed by O. 49 r. 2 and 3A of the SCR. In that event, a statute dealing with **procedure had retrospective effect** unless a contrary intention was expressed or clearly implied.

[3] On the other hand, a statute dealing with **rights had effect only for the future** and was not to be construed retrospectively, for it did not apply to proceedings begun before the commencement, it only affected proceedings begun after that, unless there was a clear indication to the contrary.

[4] In the present case there was no indication, express or implied that the amendment should not apply to pending proceedings. The Court having ruled that the amendment related only to procedure and therefore had retrospective effect, the applicant was caught by the said amendment and had to comply with the procedure set out in O. 49 r. 6 SCR. As the notice of motion was grounded under O. 49 r. 2 and 3A of the SCR, the Court accordingly made a consequential order that it be struck out with costs.

[Notice of motion struck out with costs].

Cases referred to:

Lee Chow Meng v. Public Prosecutor [1978] 2 MLJ ***(foll)***

Legislation referred to:

Subordinate Courts Rules 1980, O. 26A, O.49 rr.2, 3A, 6(1), (2), (3)(a), (b) (c), (d)

For the applicant / defendant - S. Menon; M/s. Zaid Ibrahim & Co.

For the respondent / plaintiff - Ibrahim Hashim; M/s. Hassan Ibrahim & Co.

JUDGEMENT

Haidar Bin Mohd Noor J:

The defendant filed a notice of appeal on 4 August 1993 against the whole judgment of the learned Magistrate given on 31 July 1993 in respect of civil suit no. 72-2181-1992. The learned Magistrate granted an order in respect of the application of the plaintiff for summary judgment under O. 26A of the Subordinate Courts Rules 1980 ('SCR')

As there was a delay in the filing of the record of appeal in the High Court, the defendant ('the applicant') on 30 December 1993 filed a notice of motion praying for, *inter alia*, an order for an extension of time to file the record of appeal to a date after the terms of the judgment dated 31 July 1993 in civil suit no. 72-2181-1992 are

settled or ascertained. It is supported by the affidavit of Sulip R. Menon, its solicitor. The plaintiff ('respondent') quite naturally opposed the application.

At the outset of the hearing of the notice of motion it was agreed that the Court should determine a preliminary issue, that is, whether the applicant is caught by the amendment to O. 49 in which a new rule 6 was inserted therein. The new rule 6 reads:

> 6 (1) Notwithstanding anything contained in this order, an appeal shall lie to a Judge in chambers from any decision made by the Court other than a decision made after trial.
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> (2) The appeal shall be brought by filing a notice of appeal in Form 140 within 14 days from the day on which the decision was pronounced and serving a copy of the notice on every other party to the proceedings within the time limited for the filing of appeal to the Registrar of the High Court.
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> (3) Within three weeks after the filing of the notice of appeal, the appellant shall file the record of appeal in the High Court and the record shall contain copies of:
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> (a) the application for the decision;
> (b) the statement of claim, and where defence has been filed, the statement of defence;
> (c) all affidavits filed in support of or in opposition to the application; and
> (d) the decision appealed from,
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> but shall not include the notes of evidence, the grounds of judgment or any memorandum of appeal.

The new r. 6, it seems, is intended to cover an appeal to Judge in chambers in respect of any decision made by the Subordinate Courts other than a decision made after trial. This procedure is more or less akin to an appeal from the decision of the Registrar of the High Court to Judge in chambers. The purpose, it would seem, is to expedite the disposal of such cases.

In determining the preliminary issue the Court will have to consider whether the amendment relates to procedure or rights affecting a party.

The present amendment, in my view, takes the form of a procedure only as the substantive right of appeal by the applicant remained intact. The amendment merely devises the form of procedure in the preparation of the record of appeal pertaining to any decision other than a decision made after trial which is prescribed by O. 49 rr. 2 and 3A of SCR. In that event a statute dealing with **procedure** has retrospective effect unless a contrary intention is expressed or clearly implied. In this respect the Federal Court in *Lee Chow Meng v. Public Prosecutor* [1978] 2 MLJ at p. 37, said:

> A statute dealing with procedure has retrospective effect, that is, i**t applies to proceedings begun before and after the commencement of the statute,** unless a contrary intention is expressed or clearly implied. This was so stated by Lord Blackburn in *Gardner v. Luca*s [1878] 3 App. Cas. 582, 603:
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> > ... .it is perfectly settled that if the legislature forms a new procedure, that, instead of proceeding in this form, you should proceed in another and a different way, clearly the bygone transactions are to be sued for and enforced according to the new form of procedure. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be.
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> On the other hand, a statute dealing with rights has effect only for the future and is not to be construed retrospectively, for it does not apply to proceedings begun before the commencement, it only affects proceedings begun after that, unless there is a clear indication to the contrary. This was so stated by Jessel MR in *Re Joseph Suche & Co. Ltd*. [1875] 1 Ch. D. 48, 50 in the following words:
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> > It is a general rule that when the legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect them.
>
> (emphasis added)

In this case there is no indication, express or implied, that the amendment should not apply to pending proceedings. As I rule that the amendment relates only to procedure and therefore has retrospective effect the applicant in the circumstances is caught by the said amendment and must follow the procedure set out in O. 49 r. 6 of SCR. As the notice of motion is grounded under O. 49 r. 2 and 3A of SCR I would accordingly make a consequential order that it be struck out with costs.